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BY HAND DELIVERY

Department of the Interior
Minerals Management Service
Attention: Policy and Management Improvement
1849 C Street, NW
Room 4223
Washington, DC 20240-0001

Notice of Proposed Rulemaking, RIN 1010-AD17
“The Open and Nondiscriminatory Movement of Oil and Gas as
Required by the Outer Continental Shelf Lands Act”

Re: BP Pipelines (North America) Inc.’s Comments Regarding Oil Pipelines in the OCS

Ladies and Gentlemen:

BP Pipelines (North America) Inc. (“BP Pipelines”) respectfully submits these comments relating to oil pipelines in response to the Minerals Management Service’s (“MMS”) Notice of Proposed Rulemaking (“NOPR”) regarding the Open and Nondiscriminatory Movement of Oil and Gas as required by the Outer Continental Shelf Lands Act, 72 Fed. Reg. 17,047 (Apr. 6, 2007). Overall, BP Pipelines supports the complaint process that MMS proposed, enabling a shipper transporting oil production from the Outer Continental Shelf (“OCS”) to allege that it has been denied open and nondiscriminatory pipeline access.

First, BP Pipelines endorses the complaint process described in the NOPR as applied to oil pipelines. The proposed process is transparent and not overly burdensome for either pipelines or shippers.

Second, BP Pipelines supports MMS’ proposed definitions for Federal Energy Regulatory Commission (“FERC”) pipelines and Outer Continental Shelf Land Act (“OCSLA”) pipelines, and MMS’ proposal to defer to FERC in ensuring open and nondiscriminatory access on FERC-regulated pipelines.

Third, MMS should adopt a two-year time limit to file a complaint following an action by a grantee or transporter denying open and nondiscriminatory access. A two-year time limit is

appropriate due to the sophistication of parties engaged in OCS shipping, and the risk of shippers abusing a longer time limit.

BP PIPELINES' INTEREST IN THIS RULEMAKING

BP Pipelines is a stand-alone corporation within BP p.l.c. ("BP") that owns and/or operates certain BP pipeline assets and joint venture interests in the lower-48 states. BP Pipelines operates more than 9,000 miles of pipelines owned by BP and 13 joint ventures, and holds joint venture interests in 12 additional pipeline companies that are operated by third parties. BP Pipelines operates numerous oil and natural gas pipelines in the OCS. As an owner and operator of FERC-jurisdictional oil and natural gas pipelines, as well as offshore oil and natural gas gathering systems, BP is very conscious of the non-discrimination requirements that govern its conduct. Therefore, BP has separated its pipeline business from other functions within the BP family, such as marketing and production.

COMMENTS

MMS' Proposed Complaint Process Will Appropriately Address Complaints by OCS Oil Shippers and Ensure Open and Nondiscriminatory Access.

MMS has proposed a balanced approach to ensuring open and nondiscriminatory access on OCS pipelines that reflects the historic obligations and performance of the OCS pipelines. Oil pipelines have an existing statutory duty to provide "open and nondiscriminatory access to both owner and non-owner shippers." 43 U.S.C. § 1334(f)(1)(A). At one time, there may have been questions regarding the nature of the OCSLA's "open and nondiscriminatory" access requirement as it applied to oil pipelines. For example in *Bonito Pipe Line Co.*, 61 FERC ¶ 61,050 (1992), *affirmed*, *Shell Oil Co. v. FERC*, 47 F.3d 1186 (D.C. Cir. 1995), Pennzoil petitioned FERC for an order declaring that it was not obligated to interconnect its pipeline to an oil pipeline constructed by Shell. FERC rejected the petition and required the interconnection. Since that time, FERC has not adjudicated a single complaint against an oil pipeline under the OCSLA. As BP Pipelines commented in response to MMS' Advanced Notice of Proposed Rulemaking ("ANOPR"), the lack of adjudicated cases reflects the fact that the OCSLA alone, without additional regulatory requirements, has succeeded in ensuring open and nondiscriminatory access.

Partly due to this successful self-regulation, offshore oil markets on the OCS are flourishing. There is therefore no need to risk upsetting an already functioning market with unnecessary reporting requirements. At the time MMS issued the ANOPR, OCS oil markets were vibrant and well-functioning. The markets have only improved since 2004. MMS' May 2006 report, *Deepwater Gulf of Mexico 2006: America's Expanding Frontier*, succinctly captures the phenomenal growth in offshore production and transportation, particularly with regard to deepwater developments:

- 2,600 additional active leases in the Gulf of Mexico since 1992;
- a 38% increase in deepwater producing projects since 2004 (includes the period of time during Hurricanes Katrina and Rita);
- 577 miles of deepwater oil pipelines less than or equal to 12 inches in diameter approved in 2001-2005;
- 600 miles of deepwater oil pipelines greater than 12 inches in diameter approved in 2001-2005; and
- over 6.2 billion BOE discovered by deepwater drilling since the beginning of 2000, a 50% increase over that discovered from 1974 to 1999.

When FERC adopted its OCSLA rules in Order No. 639, it rejected proposals to apply reporting requirements to OCS oil pipelines:

Duke, Tejas, and Williams query why our regulations are directed exclusively at OCS gas service providers, and not OCS oil service providers as well, since the open and non-discriminatory provisions of the OCSLA apply with equal force to both OCS gas and oil operations. Here we have elected to confine our considerations to gas matters, given that we have found rates for transportation on oil pipelines to be just and reasonable...”

Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf, Order No. 639, 65 Fed. Reg. 20354, 20365 (Apr. 17, 2000) (footnote omitted).

FERC’s approach to OCS oil pipeline regulation reflected Congress’ decision to impose light-handed regulation on oil pipelines. As FERC noted: “Many constraints commonly associated with utility-type regulation, such as review and approval of construction or acquisition, and abandonment or sale of facilities, were not imposed on oil pipelines. This has been interpreted as reflecting a Congressional intent to allow market forces freer play within the oil pipeline industry than was allowed for other common carrier industries.” *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, 58 Fed. Reg. 58753, 58755 (Nov. 4, 1993) (footnote omitted).

These considerations lead to the conclusion that MMS’ proposed complaint process will appropriately address complaints against owners of OCS oil pipelines. Particularly useful is MMS’ emphasis on informal methods to resolve disputes, such as a hotline and alternative dispute resolution. MMS strikes the right balance by providing an appropriate threshold for initiating a complaint and ensuring the complaints do not cause unnecessary discovery burdens on pipeline owners. Additional regulatory requirements are unnecessary and could bring harm to a well-functioning market.

Distinction Between OCSLA Pipeline and FERC Pipelines is Appropriate

Although the OCSLA provides MMS with jurisdiction over “FERC pipelines,” MMS’ proposed regulations distinguish FERC pipelines from other OCSLA pipelines. FERC already ensures that

pipeline owners under its jurisdiction provide open and nondiscriminatory access under the Natural Gas Act or the Interstate Commerce Act. For these so-called “FERC pipelines,” MMS reasonably proposes not to exercise redundant regulatory oversight.

Such an exclusion from MMS’ complaint process is appropriate because FERC ensures that pipelines under its jurisdiction provide open and nondiscriminatory access. For oil pipeline transportation in interstate commerce, FERC has jurisdiction and ensures such access under its Interstate Commerce Act authority. FERC also has a robust complaint system for shippers who feel that they have not received open and nondiscriminatory treatment. Shippers may file a complaint, make use of FERC’s various alternative dispute resolution avenues, or utilize FERC’s hotline to resolve any disputes. *See Complaint Procedures*, Order No. 602, 86 FERC ¶ 61,324 (1999), *order on reh’g and clarification*, Order 602-A, 88 FERC ¶ 61,114 (1999). Excluding FERC pipelines from MMS’ complaint system is therefore appropriate as it avoids unnecessary dual regulation of FERC pipelines.

A Two-Year Time Limit to Bring a Complaint is Appropriate

MMS requested comments regarding whether there should be a time limit placed on filing complaints following an action by a grantee or transporter that supposedly denies open and nondiscriminatory access. *See* 72 Fed. Reg. at 17051. A time limit is necessary to ensure finality and predictability in commercial transactions and accounting therefore. In addition, a time limit is necessary to avoid shippers using MMS’ complaint process for reasons other than its designated purpose. A two-year statute of limitations is adequate to ensure that shippers have time to bring a complaint to the attention of MMS.

Shippers on the OCS are comprised of sophisticated parties who are well-aware of requirements that pipeline owners provide open and nondiscriminatory access. In fact, of the forty-three currently held deepwater leases in the Gulf of Mexico, almost 70% are held by just a handful of companies. As FERC acknowledged in *Enbridge Offshore Facilities, LLC*, 116 FERC ¶ 61,001 at P 19 (2006), significant investments are required for investors in the Gulf of Mexico because of the technology required to develop pipelines and production. A violation of the statutory requirement to provide open and nondiscriminatory access will be recognized immediately by OCS shippers.

Allowing complaints to be filed over two years from the occurrence of a purported violation is not only unnecessary, but will create uncertainty about the finality of commercial transactions. Such finality is necessary for an efficiently operating business. Moreover, allowing complaints about long outdated conduct will result in less precise factual development and may allow certain entities to game the system or delay potential development of the OCS. Pipeline owners are investing abundant resources on the OCS and, as such, certainty regarding complaints is necessary.

CONCLUSION

MMS’ proposed complaint system provides an appropriate avenue for complaints brought by shippers who feel they have not been provided open and nondiscriminatory service on an oil

pipeline. Development on the OCS is thriving and additional regulatory burdens could stifle the markets. MMS' proposal to exclude FERC pipelines from its complaint process is appropriate as such pipelines are already regulated by FERC to assure open and nondiscriminatory access. Lastly, a two-year time limit for parties to initiate a complaint is adequate to balance the need for fairness and business certainty.

Respectfully submitted,

By Douglas W. Johnson/mcm
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